

1      Richard A. Brody, Esq. (SBN 100379)  
2      Lenneal K. Gardner, Esq. (SBN 248739)  
2      BRENT COON & ASSOCIATES  
3      44 Montgomery Street, Suite 800  
3      San Francisco, CA 94104  
4      Telephone: 415.489.7420  
4      Facsimile: 415.489.7426

5 | Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL E. JENKINS,  
Plaintiff  
  
vs.  
  
ALLIED PACKING, et al.,  
Defendant

Case No. 08-cv-01671-L-JMA

**STIPULATION JOINTLY REQUESTING  
ORDER DISMISSING DEFENDANT VIAD  
CORP. WITHOUT PREJUDICE AND  
REMANDING CASE IN ITS ENTIRETY TO  
STATE COURT AND (PROPOSED) ORDER**

**Hearing Date: December 8, 2008**

Time: 10:30 a.m.

Courtroom.: 14

**Judge:** Hon. M. James Lorenz

**Complaint Filed: July 21, 2008**

Plaintiff Michael Jenkins (“Plaintiff”) and defendant Viad Corp. (“Viad”) submit this stipulation jointly requesting that the Court issue an order dismissing without prejudice Plaintiff’s action against Viad Corp. and remanding this case in its entirety to state court.

IT IS HEREBY STIPULATED by and between Plaintiff and Viad, through their respective attorneys of records, as follows:

Plaintiff initiated this action on July 21, 2008, by filing his complaint for damages in the Superior Court of the State of California for the County of San Diego, Case No. 37-2008-00088099-CU-AS-CTL.

1       Following service of summons on its agent for service of process, Viad timely removed this  
2 case to the United States District Court for the Central District of California, asserting defenses  
3 under federal law to Plaintiff's action against Viad. No other defendant filed and served a notice of  
4 removal in this case, *Michael E. Jenkins. vs. Allied Packing, et al.*, 08-cv-01671-L-JMA, and no  
5 other defendant joined in Viad's notice of removal.

6       Plaintiff has filed a motion to remand the case to the Superior Court of the State of  
7 California for the County of San Diego. Viad has filed opposition to that motion, asserting the  
8 Court's removal jurisdiction under 28 U.S.C. § 1442(a)(1). No other defendant has filed and  
9 served opposition to Plaintiff's motion to remand. Plaintiff's motion to remand is pending before  
10 the Court.

11       Plaintiff and Viad jointly request that the Court dismiss without prejudice Plaintiff's action  
12 against Viad and remand this case in its entirety to state court. With the dismissal of Plaintiff's  
13 action against Viad, there will remain in this action no party that has invoked the jurisdiction of the  
14 Federal courts in this case.

15       Plaintiff's willingness to stipulate to the dismissal without prejudice of his action against  
16 Viad is conditioned upon the remand of this case in its entirety to the Superior Court of the State of  
17 California for the County of San Diego, and Viad's willingness to stipulate to the remand of this  
18 case to state court is conditioned on the dismissal without prejudice of Plaintiff's action against it.  
19 If the Court orders the dismissal without prejudice of Plaintiff's action against Viad and the remand  
20 of this case in its entirety to state court, Plaintiff and Viad will waive any claims for costs and  
21 expenses as against each other.

22       IT IS SO STIPULATED.

23 DATED: November 10, 2008

Respectfully submitted,

24 BRENT COON & ASSOCIATES

25 By: 

LENNEAL K. GARDNER

26 Attorneys for Plaintiff

27 Richard A. Brody  
28 Rick.Brody@bcoonlaw.com  
Lenneal K. Gardner  
Lenneal.Gardner@bcoonlaw.com

1      Brent Coon & Associates  
2      44 Montgomery Street, Suite 800  
3      San Francisco, CA 94104  
4      Tel: (415) 489-7420  
5      Fax: (415) 489-7426

6      Attorney for Plaintiff  
7      Michael E. Jenkins

8      DATED: November 10, 2008

9      Peter B. Langbord  
10     PLangbord@FoleyMansfield.com  
11     Foley & Mansfield PLLP  
12     150 South Los Robles Ave., Suite 400  
13     Pasadena, California 91101  
14     Tel: (626) 744-9359  
15     Fax: (626) 744-1702

16     Attorneys for Defendant  
17     Viad Corp.

18     **IT IS HEREBY ORDERED THAT:**

19     Based on the stipulation of the above parties, defendant Viad Corp is hereby dismissed  
20     without prejudice from the instant action. It is further ordered that the above case, *Michael E.*  
21     *Jenkins. vs. Allied Packing, et al.*, 08-cv-01671-L-JMA, be remanded to the Superior Court of the  
22     State of California in and for the County of San Diego .

23     DATED: November 13, 2008.

  
24     HONORABLE M. JAMES LORENZ  
25     Judge of the United States District Court